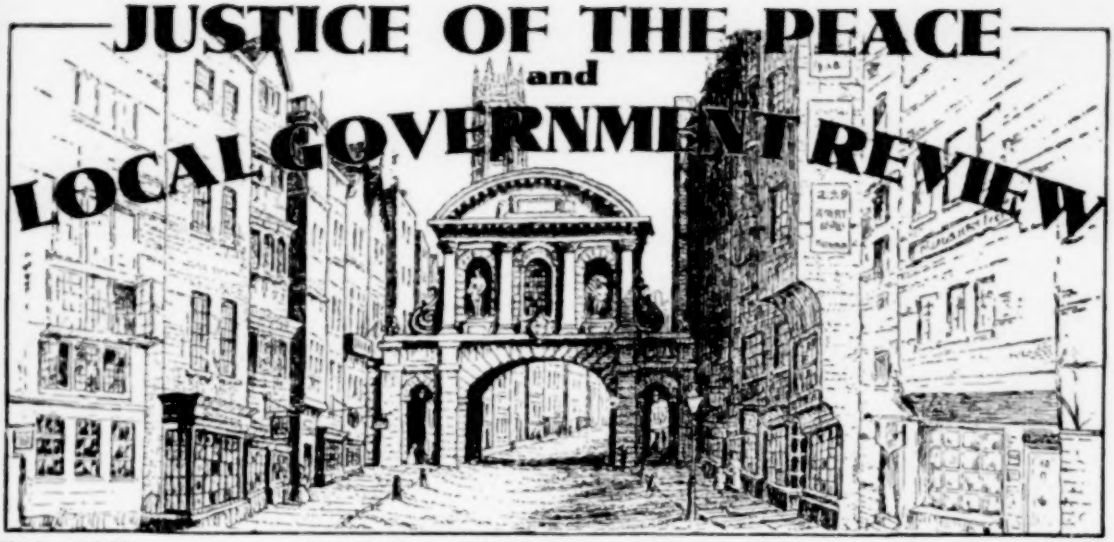
JUSTICE OF THE PEACE and LOCAL GOVERNMENT REVIEW



VOL. CXIV. LONDON: SATURDAY, APRIL 15, 1950. No. 15

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Gifts—by legacy or otherwise—will be valued for investment which would produce an income in support of a specific object, of which the following are suggestions:—

1. **Training of future Church Army Officers and Sisters.**
2. **Support of Church Army Officers and Sisters in poorest parishes.**
3. **Distressed Gentlewomen's Work.**
4. **Clergy Rest Houses.**

Preliminary enquiries will be gladly answered by the

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THE CHURCH ARMY

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In recommending a bequest or donation to the RSPCA you may confidently assure your client that every penny given will be put to work in a noble cause. Please write for the free booklet "Kindness or Cruelty" to the Secretary, RSPCA, 105 Jermyn Street, London, S.W.1.

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ROYAL SAILORS RESTS

PORTSMOUTH (1881) DEVONPORT (1876) GOSPORT (1942)

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Mrs. Bernard Currey

All buildings were destroyed by enemy action, after which the Rests carried on in temporary premises. At Devonport permanent quarters in a building purchased and converted at a cost of £30,000 have just been taken up, whilst at Portsmouth plans are well advanced to build a new Rest when permission can be obtained.

Funds are urgently needed to meet heavy reconstruction commitments and to enable the Trustees to continue and develop Miss Weston's work for the Spiritual, Moral and Physical Welfare of the ROYAL NAVY and other Services.

Gifts may be earmarked for either General or Reconstructional purposes.

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Contributions will be gratefully acknowledged. They should be sent to the Treasurer, Royal Sailors Rests, Buckingham Street, Portsmouth. Cheques, etc., should be crossed National Provincial Bank Ltd., Portsmouth.

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

LANCASHIRE COUNTY COUNCIL

ASSISTANT Solicitor required. Salary scale £595—£660. Initial salary in accordance with qualifications and experience. Previous Local Government service not essential.

The appointment is subject to medical examination and to the Local Government Superannuation Act.

Applications stating age, qualification and experience, together with the names of three referees, to be forwarded to the Clerk of the County Council, County Offices, Preston, by May 1, 1950.

BOROUGH OF SOUTHGATE

Appointment of Legal Clerk (Unadmitted)

APPLICATIONS are invited for the appointment of a Legal Clerk (Unadmitted) in the Town Clerk's Department at a salary in accordance with Grades II/III of the A.P.T. Division of the National Scale of Salaries (£420 - £15—£495) plus the appropriate "London Weighting" allowance.

Applicants must have had considerable experience in a Solicitor's Office or the Legal Department of a local authority and be capable of carrying out general legal and conveyancing work with only nominal supervision. Local government experience would be an advantage, but is not essential.

The appointment (which will be terminable by one month's notice on either side) is subject to the provisions of the National Scheme of Conditions of Service and the Local Government Superannuation Act, 1937. The successful candidate will be required to pass a medical examination.

Forms of application may be obtained from the Town Clerk, Southgate Town Hall, Palmers Green, N.13, to whom they must be returned not later than April 24, 1950.

GORDON H. TAYLOR,
Town Clerk.

Southgate Town Hall,
Palmers Green,
N.13.

COUNTY OF SOMERSET

APPOINTMENT of:

(*a*) one male Probation Officer.
(*b*) one female Probation Officer.

The Probation Committee for the Somerset Combined Area invite applications for the appointment of:—

(*a*) one whole time male Probation Officer;
(*b*) one whole time female Probation Officer.

The appointment will be subject to the Probation Rules, and salary will be paid in accordance with these Rules, together with a travelling allowance. The salary will be subject to superannuation deduction, and the selected candidates will be required to pass a medical examination. Applicants must be not less than 23 and not more than 40 years of age, unless the applicant is at present serving as a whole time Probation Officer, or has satisfactorily completed a course of training approved by the Home Secretary.

Applications, stating age, qualifications and experience, should be addressed to reach the undersigned not later than April 22, 1950.

Testimonials are not at present required but candidates should give the names of three referees to whom inquiries can be addressed.

Canvassing, either directly or indirectly, will be a disqualification.

HAROLD KING,
Clerk of the Peace.

County Hall,
Taunton.
March 31, 1950.

INQUIRIES

DETECTIVE AGENCY (HOYLAND'S) (T. E. Hoyland, **ex-Detective Sergeant**); Member of British Detectives Association and Federation of British Detectives. **Divorce**, Process serving, Observations, **Confidential investigations** and Status inquiries anywhere. Male and Female staff. **Over 150 Agents in various parts of the country.**—1, Mayo Road, Bradford. Tel.: Bradford **26823** day or night. Telegrams: "Evidence" Bradford.

COUNTY OF NORTHUMBERLAND

Castle Ward West Petty Sessional Division

Appointment of Assistant to the Clerk of the Justices

APPLICATIONS are invited for the appointment of a male assistant to the Clerk of the Justices for the above division, whose offices are in Newcastle upon Tyne, at a salary in accordance with the Clerical Division of the National Scales (£395—£440).

Applicants must be capable shorthand typists and competent to take shorthand notes in court. The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Forms of application, which may be obtained from the undersigned, must be completed and returned to him not later than April 29, 1950.

E. P. HARVEY,
Clerk of the Peace for Northumberland.

County Hall,
Newcastle upon Tyne, 1.
April 3, 1950.

COUNTY OF NORTHUMBERLAND

Castle Ward West Petty Sessional Division

Appointment of Deputy Clerk of the Justices

APPLICATIONS are invited for the above whole-time appointment from Solicitors who have experience in magisterial law and practice and are capable of acting as Clerk of the Court (held in Newcastle upon Tyne) without supervision.

The salary will be in accordance with Grade VII of the National Scales (£635 × 25—£710), the commencing salary being dependent upon the experience of the person appointed.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Forms of application, which may be obtained from the undersigned, must be completed and returned to him not later than April 29, 1950.

E. P. HARVEY,
Clerk of the Peace for Northumberland.

County Hall,
Newcastle upon Tyne, 1.
April 3, 1950.

BOROUGH AND DISTRICT ELECTIONS FOR 1950

CALENDAR

By R. N. HUTCHINS, LL.B.

A COMPREHENSIVE GUIDE TO THE FIRST LOCAL ELECTIONS HELD UNDER THE CONSOLIDATED LEGISLATION.

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Local Government Review
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NOTES of the WEEK

Proof of Adultery

In *Ginesi* v. *Ginesi* [1948] 1 All E.R. 373, it was held by the Court of Appeal that the degree of proof required to establish a charge of adultery is the same as in a criminal case, and that therefore the charge must be proved beyond all reasonable doubt. This standard is not applicable where other matrimonial offences are alleged: *Davis* v. *Davis* [1949] W.N. 468.

In *Gower* v. *Gower* [1950] W.N. 156, upon the hearing of an appeal against the dismissal by the judge of an application by a husband based on an allegation of adultery by his wife, the Court of Appeal held that there was sufficient evidence of adultery and allowed the appeal. Denning, L.J., said that probably the judge had set too high a standard of proof. He added that he wished to issue a caveat about the standard of proof. In his opinion, the Court of Appeal was not irrevocably committed to the view that a charge of adultery must be regarded as a criminal charge to be proved beyond all reasonable doubt. The lord justice gave five reasons for questioning the authority of the decision in *Ginesi* v. *Ginesi*, *supra*. He referred to the fact that in the statute, adultery was put on the same footing as cruelty and other matrimonial offences, and pointed out that the Court of Appeal had held that the strict standard of proof did not apply to cruelty: *Davis* v. *Davis*, *supra*.

For reasons he had given, said Denning, L.J., the Court of Appeal might be entitled to reconsider *Ginesi* v. *Ginesi*, *supra*, if and when the occasion arose.

Desertion after "agreed" Separation

The fact that husband and wife have come to an agreement to separate is generally a bar to proceedings on the ground of desertion. The agreement must be a real agreement, however, and there are circumstances in which what appears at first sight to negative the idea of desertion may prove to be no bar. The case of *Dubovie* v. *Dubovie*, which we have not yet seen fully reported, but of which we have received a transcript, illustrates this point clearly.

The case was an appeal from an order of justices made on the ground of desertion, and was heard on December 13, 1949, before Lord Merriman, P., and Pearce, J.

From the judgment of the President, it appears that the allegation was that the husband had been improvident, had gambled and got into debt, so that he provided inadequate and spasmodic maintenance for his wife. It became impossible to keep the matrimonial home going and, apparently, on the suggestion of the husband, the wife went to her mother on the understanding that she would stay there six months. In the note of her evidence before the justices appeared the statement: "We decided to separate. He got the sack from work. He suggested my going to my mother to live for six months . . . ." That statement was the foundation for a submission on behalf of the husband that there was no case to answer, the parties having separated by agreement.

The President, in the course of his judgment, said that the inevitable had happened, they had to separate because of this conduct of which the wife complained. This did not constitute an agreed separation, there being nothing open to the wife but to go to her mother; the husband did not provide any alternative accommodation and she did not know at the time where he went. This was not inconsistent with an intention on his part that the break up of the home should be permanent. Nor had the husband, apparently, attempted to provide a home after the six months. The wife had not been cross-examined, the defence resting upon a submission of no case, and there was abundant evidence upon which the justices could find that the wife was obliged by the husband's misconduct to submit to what had amounted to a permanent disruption of cohabitation. The appeal was dismissed.

The Submission of "No Case"

In the course of his judgment, the President also made some important observations as to the effect, in a matrimonial case, of a submission by the defence that the complainant has made out no case to answer.

Lord Merriman said: "The husband and his advisers decided not to cross-examine her and not to call any evidence, to stand upon the submission that she had made no case of desertion. I want to say one word about that generally. We do get from time to time these appeals, in which there has been a submission of no case, which has either been accepted or rejected, as the case may be, and very often, if we think the submission was wholly misconceived, instead of dismissing the appeal outright, we allow it to the extent of ordering a rehearing, for this reason: the Divorce Court, and, as part of the Divorce Court this Divisional Court, in particular, is not bound by estoppels which are binding upon the parties. There is a very well established rule in the common law courts that if a party makes a submission of no case, and elects to stand upon it without calling any evidence, he cannot afterwards expect the Court of Appeal to order a new trial in order that he may call the evidence which he refused to call at the first hearing. But that is not necessarily so, and in many cases, as for example, where there is a charge of cruelty or a charge of adultery which could at once be made the subject of divorce proceedings, we think it right to ignore that very convenient and just rule of practice which prevails in the common law courts so as to avoid any semblance of creating an estoppel which will prevent the husband, or the wife, as the case may be, from putting his or her case in some other court.

"But that does not apply here, for this is a charge of desertion, and at the outside the desertion has only lasted just over twelve

months, so that no harm is done if we dismiss this appeal and leave the *status quo* as it is."

The effect of a submission of "no case" before justices in a matrimonial case was discussed in an article at 111 J.P.N. 251 with special reference to the decision in *Goodwin* v. *Goodwin* (1947) W.N. 28.

Causes and Treatment of Juvenile Crime

Juvenile delinquency still continues to be a principal topic of discussion and the revival of corporal punishment is being advocated for both juveniles and adults. Opponents of this method of treatment rely sometimes on statistics, sometimes on the report of the Departmental Committee, sometimes on the opinions of psychologists. Some people have little use for punishment as a means of treating youthful offenders and make all sorts of excuses for them, some sound, some unsound.

In our issue of April 1, we referred to an article by Sir Leo Page in the *Nineteenth Century and After*, and we do so again.

Practically every boy who steals, the article says, knows perfectly well that he is doing wrong and is entirely capable of behaving honestly if he wishes to do so.

Mr. Joyce, headmaster of an approved school, is quoted as telling of a boy who told him he had stolen because he had been born with an inborn hatred of his mother, and that his cure would be a difficult business and take a considerable time. Sir Leo comments: "So long as there are psychiatrists who are prepared to tell boys such nonsense so long will there be boys only too ready to accept it as applicable to themselves: it is obviously more distinguished to steal because of some such interesting peculiarity than to do so merely because one is like all the other little thieves in the school who steal cigarettes for the prosaic reason that they want to smoke."

Turning to education in schools, Sir Leo Page disclaims any intention whatever of attacking or criticizing teachers, but he says he has been shocked many times by the fact that boys appearing in court soon after leaving school appear to have been given a pathetically inadequate equipment to face life. Evidently it is the education system, not the teaching profession, which he finds at fault. "I am, of course, generalizing, but the boys seem to be utterly selfish and to have no idea of loyalty or the team spirit. They are bone lazy, and not only ignorant to a degree I should have scarcely thought possible in many cases, but entirely content to remain so." The article goes on to complain of the complete lack of discipline shown by these boys when they go to work and the way they complain of being "ordered about" when they go into the services. Referring to the teaching of civics in a senior school with special reference to local government, Sir Leo suggests that if a manly teacher could get boys to understand that stealing is neither fine nor clever, that any weakling can give way to temptation but that it takes a chap with guts to resist it, that would be the kind of civics worth teaching.

The article is provocative, as no doubt it is intended to be, in the sense that it throws out a challenge to all sorts of people which, rightly some of them will answer. It certainly ends on a note of challenge: "Finally, we may usefully remember that fear—first, of being caught, and, secondly, of being soundly punished—is a most valuable deterrent. It would be a wise economy to go to much trouble and expense to bring police forces up to strength. A fully staffed force will catch many more young offenders than an under-staffed one. Having caught our offender we need to deal with him in a way likely to be effective. No one doubts that some juvenile courts are as good as such courts can be. But there are many others in which the justices appear to forget that a juvenile court, whatever its civil and special functions, remains a criminal court, and it is the duty of a criminal court to protect the public from crime. The best critics of juvenile courts are not the justices who sit in them. Inevitably, they judge by their intentions. But the police and the public judge by the harder test of whether the boys offend again."

Budget Prospect

An "overall" surplus of £62 million in the actual outturn for 1949-50, compared with a budget estimate of £14 million, does not suggest much scope for relief from taxation in 1950-51, looking partly at the growth of expenditure on social services, the full effect yet to be felt of tax reliefs enacted previously, and at some large excesses of actual revenue over estimated which may not recur. In 1949-50, profits tax and excess profits tax produced £297 million against an estimate of £240 million, sale of surplus war stores £79 million against £44 million, and receipts from certain trading services £48 million against £18 million; a yield of £1,438 million from income tax was considerably short of the estimate of £1,490 million. The net result of a larger excess of actual revenue over the excess of actual expenditure was an ordinary surplus of £549 million, compared with an estimate of £470 million. Net "below-the-line" expenditure of £487 million exceeded the estimate of £456 million, and resulted in an "overall" surplus of £62 million.

Some hope might be derived from the Economic Survey for 1950 (Cmd. 7915) seeing that direct taxes of income and capital, and indirect taxes, are expected to total only £6 million more in 1950 (£4,470 million) than in 1949 (£4,464 million), and that an increase from £12,834 million to £13,345 million in the gross national product might be expected to take care of a rise from £2,037 million to £2,220 million in all public authorities' current expenditure on goods and services. The survey anticipates that the value of goods and services available for consumers will increase by nearly £250 million in 1950, but the extent of the allowance made for higher domestic prices to cover more costly imports following devaluation is doubtful. Probability of a careful check on personal consumption by budgetary devices may be anticipated from a statement in the conclusion of the survey, viz., that a ten *per cent.* rise in personal consumption would require to offset it a twenty *per cent.* cut in investment and public expenditure, or a forty *per cent.* cut in public expenditure alone. Since there are no signs of a material reduction of public expenditure, it seems that a high level of taxation will continue to be one of the means of "steady and rapid progress towards most of the fundamental objectives of national economic policy."

National Parks and Access to the Countryside

The local authorities who may shortly be approached by the National Parks Commission for preliminary discussions will presumably be those whom the Commission are required by the Act of 1949, s. 7 (1), to consult before designating a National Park; the authorities are every joint planning board, county council, county borough council and county district council whose area includes any land in the area to be designated a Park. First consideration will, as requested by the Minister of Town and Country Planning, be given by the Commission to the areas listed in the Hobhouse report (July, 1947, Cmd. 7121) as proposed National Parks.

In Part III of the report, twelve National Parks were recommended for designation "by annual instalments of four over a period of three years immediately following the passage of legislation." Taking account of geographical distribution and the need for protection, and not implying any attempted assess-

ment of their relative beauty and recreational value from the order in which the areas were arranged, the Hobhouse report recommended as a first instalment the Lake District, North Wales, the Peak District and Dartmoor, as a second instalment the Yorkshire Dales, Pembrokeshire Coast, Exmoor and the South Downs, and as a third instalment the Roman Wall (roughly, between Carlisle and Newcastle-upon-Tyne), North York Moors, Brecon Beacons and Black Mountains, and the Norfolk Broads. Helpful appreciations of the twelve Park areas were given in an appendix to the report, and each area was delineated on a separate map.

When the first Parks are designated (after procedure with regard to orders largely set out in the Act of 1949, sch. 1) further guidance may be given by the Ministry of Town and Country Planning to the local authorities concerned. Where necessary, modifications will, according to the Ministry's circ. 84, be made to the normal machinery of development control to apply to these areas as they are designated. The Minister will also amend the Development Plans Regulations in order to require planning authorities to show National Parks and areas of outstanding natural beauty in their development plans. If it seems likely at any time that the submission of a development plan will coincide with the submission by the National Parks Commission of an order designating a National Park which comprises land affected by the development plan, the Minister will make regulations under the National Parks Act, s. 9 (2), and under the Town and Country Planning Act, 1947, enabling the proceedings in both matters to be taken concurrently.

Further circulars to be sent to local authorities will deal with the Act of 1949, Part III (nature conservation), Part IV (public rights of way) and Part V (access to open country). Meanwhile, the Ministry mention powers conferred on a local planning authority (usually, the council of a county or county borough) by s. 89 with respect to the planting of trees and treatment of derelict land. Under s. 114 (3), "planting of trees" is to be construed as including references to the planting of bushes, the planting or sowing of flowers and the sowing of grass and the laying of turf. Large schemes involving substantial works or any heavy capital expenditure are, the Ministry point out, inappropriate in present circumstances, though it may be possible to achieve a considerable improvement with a relatively small expenditure of labour or capital. Delegation regulations are proposed to be made by the Minister of Town and Country Planning, so that in appropriate circumstances, pursuant to s. 102 (1) in a particular case or s. 102 (5) in general, a council of a county district may exercise powers under s. 89.

Pleasure and Planes

In *Hall* v. *Beckenham Corporation* [1949] 1 All E.R. 423; 113 J.P. 179, the plaintiff sought damages for nuisance, an injunction, and a declaration that the local authority were not entitled to permit the committing of a nuisance by noise in their pleasure ground, which had been provided under s. 164 of the Public Health Act, 1875. The decision in *A.G.* v. *Tod Heatley* (1897) 61 J.P. 164 was relied on for the plaintiff. Other cases, in which a defendant has been held liable for allowing a nuisance on his land, such as *A.G.* v. *Corke* (1933) 102 L.J. Ch. 30, and *R.* v. *Eppou JJ., ex parte Burlinson* [1947] 2 All E.R. 537; 112 J.P. 5, upon the position of local authorities, do not seem to have been considered relevant. The effect of the decision in *Hall* v. *Beckenham Corporation* is that a local authority which provides a pleasure ground is not to be held liable in damages because persons taking their pleasure in the ground do so in a manner which is a nuisance to persons outside. This, so far, is satisfactory. It is one of the less attractive sides of the English character, that so many of us dislike letting the rest of us enjoy ourselves in our own way: the Puritan, who condemned bear baiting not because of its cruelty to the bear but because it gave pleasure to the public, is a permanent type; he constantly crops up, objecting to dances and cinemas, trying to stop darts in public houses and mixed bathing at the seaside. The position of local authorities renders their members and officials liable to especially virulent outbreaks of this morbidity. To hold local authorities responsible in the courts, for the behaviour of persons who venture to regard public pleasure grounds as places provided for the pleasure of the public, would stimulate efforts, by multiplying byelaws and by withholding facilities for the sort of enjoyment which does not appeal to the average councillor, to ensure that pleasure grounds afford a minimum of pleasure. For all that, there are two or three forms of enjoyment which can be so detrimental to the equal enjoyment of others that restriction, or even in some grounds prohibition, can be justified. One is golf; another is the flying of model aircraft of the newest types. This last was, in fact, the matter at issue in the *Beckenham* case, and, in order to cope with it, model byelaws have been issued from the Home Office, after consultation with the Ministry of Civil Aviation, the Association of Municipal Corporations, and the Urban District Councils Association, for the guidance of local authorities making byelaws under s. 164 of the Public Health Act, 1875, or s. 15 of the Open Spaces Act, 1906, to regulate the flying of power-driven model aircraft. Developments in size and speed, and the recently increased availability of those types of model aircraft to which the model byelaws are expressed to apply, have made them potentially dangerous, and also capable of creating a nuisance through noise. On the other hand, the Home Office ask local authorities to recognize that through the construction and flying of model aircraft a real contribution may be made to the science of aviation; that they help to stimulate interest in national aviation; and that, under suitable conditions, they offer to many young people a legitimate interest. The model byelaws are not intended for the restriction of flying, but to make it possible to permit flying in areas where permission might otherwise have to be withheld. Any restrictions should be limited to what is really necessary under local conditions, to protect the community at large from danger or nuisance: this, by the way, is an exhortation which might be taken to heart by local authorities in many contexts. Some of the smaller recreation grounds may be wholly unsuitable for flying power-driven model aircraft, and in many of these, since no one is likely to try flying them, no byelaw will be needed. For grounds where the need arises, there is a prohibitory byelaw in the model series. In other grounds and open spaces, public safety can be secured by restricting flying to models flown on a control line, or by restricting it to a part of the ground set apart by the local authority and indicated by notices, or by restricting it to specified hours or days, or by a combination of these restrictions. The model byelaws also contain provisions intended to prevent nuisance from noise. So far as the latter is the object of the restrictions, exemption could be allowed for effectively silenced aircraft. It is understood that a silencer is now available for the larger, though not yet for the smaller, models. We are pleased to find the Home Office suggesting that in very large open spaces restrictions may not be necessary at all, or that it may be enough to restrict flying to a suitable part, without requiring the use of control lines. It may be considered unsafe, however, to allow the free flight in any circumstances of jet propelled and rocket-propelled models. It is added that any proposal to make such byelaws should be brought to the notice of any local model aircraft clubs, and their views should be considered, before the draft is forwarded to the Home Office for preliminary approval.

CONSTRUCTIVE DESERTION

It may be doubted whether any type of matrimonial case presents difficulties of greater subtlety and delicacy for magistrates than those in which allegations of desertion are largely founded upon refusal of normal sexual relations by one of the spouses.

The recent decision in *Lawrance* v. *Lawrance* [1950] P. 84, has once again brought the matter into prominence, but it needs careful perusal if it is not to add confusion to an already complicated branch of the law.

To study it apart from other cases in which similar matters have been discussed would be fatal to an exact assessment of its purport. It will be well to take a glance at three preceding cases in order to gain a clear perspective of an aspect of matrimonial legal practice which is becoming increasingly prominent as a result of the prevailing neuroses of those ill-adjusted times.

It might have been thought that the case of *Weatherley* v. *Weatherley* (1946) 110 J.P. 255 and (1947) 111 J.P. 220, affirming as it did the longstanding decision in *Jackson* v. *Jackson* [1924] P. 19, would so far clarify the issue that refusal of sexual intercourse would figure with less prominence amongst grounds upon which spouses sought divorce or separation. *Weatherley* v. *Weatherley* (*supra*) was finally decided by the House of Lords, and in his judgment Lord Jowitt, L.C., quoted the words used by Collins, L.J., in *Jackson* v. *Jackson* (*supra*): "reflection upon the manifold duties of the married state must, I think, convince any reasonable mind that this refusal of itself by one of the parties, while the parties remain living together and discharging the other duties of the married state, can not be said to amount to desertion. It is not abandonment, it is not living apart. If it is a refusal of duty, it does not purport to constitute the matrimonial relationship." Lord Jowitt went on to say: "I agree with that decision, but even if I had thought it incorrect, I should still have been of the opinion that when the legislature in the Act of 1937 for the first time made desertion by itself a ground of divorce, it cannot have intended the word 'desertion' to bear a meaning which it does not naturally bear and which judicial authority had so recently denied it."

Thus *Weatherley* v. *Weatherley* marked no change in the law. It merely reinforced *Jackson* v. *Jackson*. But *Scotcher* v. *Scotcher* (1946) 110 J.P. 247, marked the initiation of a new phase of the handling of these matters. The facts of this case were slightly different from those obtaining in *Weatherley* v. *Weatherley*, and it is important to note that it was this distinction in factual background which occasioned the different outcome of the case. The husband in *Scotcher* v. *Scotcher* sued for divorce on the grounds of desertion and advanced evidence of his wife's persistent refusal of sexual intercourse which was accompanied by studied neglect and the adoption of an attitude of complete unconcern when the husband threatened to leave if she did not mend her ways. In his judgment Willmer, J., drew attention to Hill, J.'s, dictum in *Jackson* v. *Jackson* (*supra*): "Refusal to have sexual intercourse may be a fact which, taken with other facts, has weight in considering whether the husband has really caused the wife to live apart." Willmer, J., proceeded thus: "If this is right it appears to me . . . the question which I have to decide in this case is one of fact, namely, whether the conduct of the wife, taken as a whole, including her refusal of sexual intercourse, constitutes such a total disregard of the fundamental obligations of matrimony as to afford evidence of an intention to desert." In finding in favour of the husband the learned judge held that the refusal of sexual intercourse plus her general attitude entitled him to find the wife guilty of desertion.

Scotcher v. *Scotcher* (*supra*) marked the first practical application of the doctrine adumbrated in *Jackson* v. *Jackson*—the doctrine that sexual neglect *plus* some other complaint might justify divorce or separation. The number of reported cases which have followed it shows how eagerly it has been seized upon as legal answer to a personal problem now, alas, only too prevalent: the disintegration of a marriage through sexual maladjustment. This case ensured that courts would frequently be called upon to engage in a delicate balancing act in which the scales of justice were to be operated by some of the most intangible factors in human relationships.

The tendency was reinforced by the Lord Chancellor's words in *Baxter* v. *Baxter* [1947] 2 All E.R. 886, a case which dealt with the issue of consummation as affected by birth control practices. He said: "the proper occasion for considering the subjects raised by this appeal is when the sexual life of the spouses and the responsibilities of either or both for a childless home, *form the background to some other ground of relief*." The italics are ours, for these are the vital syllables, never to be overlooked.

The passage quoted was referred to with approbation by Lord Merriman, P., in the next case we wish to mention: *Rice* v. *Rice* [1948] 1 All E.R. 188, in which a wife alleged desertion by her husband. He had left her after quarrels arising from her refusal to have children and to allow normal intercourse. The justices refused her application, and upon her appeal Lord Merriman, P., after quoting the passage indicated above, said: "What does affect the matter is that the wife has been held in the past to have taken up a wrong-headed attitude towards the sexual relations between herself and her husband, and to have aggravated the resentment which he felt at that attitude by her constant nagging . . . There is nothing irrevocable about these matters. The wife can mend her ways . . . If so the husband is not entitled to take up the view that it is finally decided that this marriage is at an end. It will be his duty, in turn, to be ready and willing to resume cohabitation . . . if not . . . it will be he who will assume the character of deserter."

In *Lawrance* v. *Lawrance* (*supra*) it was the husband who refused marital relations and the wife who left. But it is important to observe that more was alleged against the husband than sexual neglect. It was part of the wife's case that she persistently besought her husband for regular intercourse, only to be met with insulting retorts, and that he left her alone in a large farmhouse at night, and used bad language to her and made suggestions of indecency.

Lord Merriman, P., in his judgment on the husband's appeal from the magistrate's order on the grounds of desertion said at the outset that the fundamental trouble between the parties was sexual. The matter had to be considered in relation to the husband's attitude to this trouble. His Lordship dealt with the evidence and cross-examination of the husband. He said: "They all tend to show that the husband knew that the point of the reconciliation was that he should behave properly as a husband in respect of the physical relationship . . . I am satisfied that the wife has proved that she was justified in withdrawing from cohabitation because of the wrongs done to her by her husband *in and arising from this vital aspect of married life*." The italics are ours, for they go to the heart of the law. The burden of the cases we have reviewed is two-fold: relief on the grounds of constructive desertion can be given to a spouse alleging sexual neglect by the other *provided that* it is accompanied by neglect in other spheres of the marital relationship,

by insult, callousness, or contemptuous indifference to the known consequences of the attitude adopted. In view of the unequivocal nature of the decision in *Weatherley* v. *Weatherley* it is unlikely that courts will often have to concern themselves with allegations based solely upon refusal of sexual intercourse. If they are confronted with such cases the law is quite clear that the complaints can not be entertained. But it is equally apparent that the prevailing atmosphere of the times will entail a succession of applications for relief in which the sexual aspect of the parties' married life, while not the sole matter in issue, may well be the principal element in the complainant's case.

The High Court has made it clear that the matter must be treated by justices as one primarily of fact, subject to the overriding precept that relief can be given provided that the court is satisfied that one of the parties has deliberately refused normal sexual relations and has, at the same time, treated the legitimate resentment of the deprived spouse with contumely or general neglect. The dual aspect of the problem is what needs to be borne in mind.

IN THE MULTITUDE OF COUNSELLORS?

A student of history, comparing the Government front bench in 1949 with 1929 or 1909, will have been struck first by its denser population; he may have been inclined to say with the Bishop of Birmingham in another context "we need to restrict our population. Will it fall, under the working of the welfare state? Obviously not, without teaching which will be unpopular coupled with practical measures which arouse indignant opposition." Many Prime Ministers have found this true, when seeking to reduce their cabinets to workable dimensions. The increase in numbers has not been mainly in the cabinet itself. The duplication of first class posts, outside but only just outside the cabinet, by the invention of "Ministers of State," to understudy a Secretary of State, with greater prestige than that of a Parliamentary Under Secretary of State, and the creation of functional departments, to look after particular topics which in the nineteenth and early twentieth century had been taken in their stride by the Presidents of Boards like the Board of Trade and the Local Government Board, had begun between the wars. A little earlier still it would have been thought that the proper way to deal (for instance) with transport or with fuel was to form a division within an existing government office, and, at most, to give it a Parliamentary Secretary of its own under the command of a President of cabinet rank. This was, for instance, the course taken when the Department of Overseas Trade was first established, and also when the Mines Department of the Board of Trade came into being. It has not been entirely the fault of successive Governments, that successive Ministers, and Ministries with functional titles, have spread themselves around Whitehall. In part, certainly, there is a purely political cause—that is to say, it places at the disposal of the Prime Minister of the day and his Chief Whip a means of rewarding assiduous supporters, if they possess anything like superficial competence for being put on the front bench. At least as strong a cause for creating some of these departments has, however, been outside pressure, from commercial or aesthetic groups which have felt that the particular matters in which they were interested would receive better attention from the Government and Parliament, if they had a Minister specially assigned to them. Housing is an instance of this sort, where the pressure failed largely (it is said) through Mr. Aneurin Bevan's insisting, when he took cabinet office, upon holding housing as well as health in his own hands. An instance where outside pressure was successful, at least as much as any inside political move on the part of the Government of the day, was the creation of the Ministry of Town and Country Planning. As all local government readers know, town planning (as it was originally called) began its Whitehall life linked with housing, as one division of the office of the Local Government Board. It so continued within the Ministry of Health and, at any rate, most local authorities, so far as our information goes, were contented that it should do so. Aesthetic forces outside, some of which would have gone so far as to divorce the subject from local government control, in the localities as well as in Whitehall, convinced the Prime Minister in 1943 that a new Ministry was needed. After a brief interlude when town and country planning, as it had become by virtue of the Act of 1932, was joined with the newly created and much expanded Ministry of Works, it was split off again and given independent status. It was only after the general election of 1945 that the new Ministry had a fair chance to show what it could do, since until then it had been hampered by the war and fully occupied in passing the Town and Country Planning Act, 1944, and mapping out its programme. From 1945 to 1950 it was ruled without interruption by the same Minister, a Minister who as chairman of the planning committee of the London County Council was not without experience, but it can hardly be said that it has enjoyed a good press or any marked acceptance by the public. In part this is due to fundamental divisions, of conscious opinion and of subconscious approach, among the people who liked to talk about planning. Planning in the widest sense was in everybody's mouth four years ago, but now shows signs of sinking to a whisper. It is, in short, in danger of growing unfashionable, although no doubt there are (as always) those who still say that it would save the country, and perhaps the world, if only it were carried out according to their formula. In so far as planning in the wide sense has been consciously attempted in England since the war, it has not fallen to a separate Ministry but to an organization within the cabinet office, of which the public knows little except that its chairman enjoys a personal salary exceeding that of cabinet Ministers, and enjoys also, so far as can be seen, complete immunity from the criticism to which ministers are subject. This may be the right method for planning great affairs: since nobody knows what the planning organization in the cabinet office has done, is doing, or will do, nobody can say whether it is right or wrong. What is evident is that the Ministry of Town and Country Planning is concerned, on the town planning side, with what is called "land use," and that its most evident activities are of a regulative type and restrictive, while it also has to arbitrate between the demands of public services (or private enterprises which are of importance to the public) on the one hand and the desire of aesthetic persons, and those who for one reason or another do not want changes to be made, upon the other hand. One favourite criticism of the arrangement which brought that Ministry into existence was up to the election that the Minister of Town and Country Planning lacked proper status, and was in fact not even a member of the cabinet. The inference was that, if Mr. Silkin or his successor were added to the cabinet, aesthetic considerations would outweigh (for instance) the need for electricity or rifle ranges—in other words, that planning would thus be recognized as being what many of its advocates desire, a method for preventing developments which threaten the *status quo* in an attractive portion of a town or in the English countryside. This cry is even heard among local authorities;

their various functions are in the aggregate among the greatest causes of change in yesterday's landscape, but as soon as planning is invoked the local authority becomes very conscious of the beam in its neighbour's eye. In a country still acutely divided upon the merits of nationalization, complaints against the Minister of Town and Country Planning are bound to be accentuated, whenever he reaches a decision favourable to some socialized enterprise such as electricity or gas. The Town and Country Planning Act, 1944, really brought the functions of the new Minister in this direction into their present focus, by providing (in effect) that major enterprises should not be carried out without consultation with him, but it was not intended either by the Government in office in 1944 or by that which promoted the Act of 1947, clearing up amongst other things the Act of 1944, that the views of the Minister of Town and Country Planning or his professional advisers should necessarily prevail. To put this another way, it was always the intention that different claims should be weighed and that gas-holders, electricity pylons, reservoirs, or as the case might be which were needed by a modern and still growing community, while not to be sited without thought for aesthetic as well as other considerations appropriate to the particular case, were equally not to be excluded merely on aesthetic grounds if the utilitarian grounds were in the particular case of greater weight. We discussed this condominium at length under the title " Bankside and a Moral," at 111 J.P.N. 324, and we still think that the condominium devised by the Government which held office in 1944 was as good a solution as could have been found under English modes of thought. If the advocates of higher status and a stronger hand for the Minister of Town and Country Planning had had their way, and that way had been followed to its logical conclusion, a single Minister would have had power to hold up all forms of national development. We should soon have found that persons who required water, electricity, and so forth would be protesting, just as strongly as those who object to change in the landscape protest now in every case. Such protests are becoming common form, whether it is a power station within sight of St. Paul's Cathedral, or cooling towers at Durham, or quarrying into a Somersetshire hill. If the wishes of the protestants were to be carried out, it would be necessary to remove the Minister's decision from parliamentary review—else there would be no more general satisfaction than there is at present. What is, we fancy, forgotten in many of these cases is that if the Minister were not there to arbitrate and reach a decision of some sort, many of the projects to which objection is made would have to be passed through parliamentary committees, and few people who have had experience of dealing with proposals for public works by local legislation Bills would regard that as an improvement on the present system. Sooner or later the public, so far as it is interested in matters of this sort, must make up its mind whether it wants to have a Ministry of Town and Country Planning, or to go back to the former jumble of enterprises fighting their way through the committee rooms of both Houses. All this is not to say that maintenance of a separate Ministry of Town and Country Planning is essential, or indeed expedient. That seems to us a very open question, and when the new Parliament has gone into its stride, and the Government has had time to consider the machinery of government, it will not be altogether surprising to find functions now exercised by the Minister of Town and Country Planning broken up, and reassigned to other members of the Government. Meanwhile it will be interesting to see whether the enthusiasts, who believed that the reason why their pet enthusiasms were failing to achieve success was that Mr. Silkin was not a member of the cabinet, will find greater cause for satisfaction in the taking of his place by a cabinet minister who is, while looking after that Ministry, to devote himself also to the " normal duties of a senior member of the Government." (Irreverent persons may be reminded of Mr. Sartorius, who devoted himself to managing his property in such time as was left to him from the ordinary avocations of a gentleman—though we hasten to disclaim any suggestion that Lickcheese has become a Parliamentary or Permanent Secretary in St. James's Square.) Things may turn out as the enthusiasts desire; equally it may be found that a King Log, who in their view could not fly high enough to serve their purpose, has been replaced by King Stock who is required by the Prime Minister to be on the wing up and down Whitehall, perhaps with occasional flights to Strasburg or elsewhere, and dip his beak in a dozen departmental pitchers. There is, anyhow, a type of mind which can never be satisfied with the compromises which normally take place in English life, between the aesthetic and the practical: the type which thrust itself into prominence in the pages of *The Times* and elsewhere in the early reconstruction years, and can always be sure of a hearing, since it is inevitably in opposition to whatever Government has the burden of decision. It was vain for Mr. Silkin or his spokesman in the House of Commons to demonstrate that quarrying, on a side of Dulcote Hill which was out of sight of Wells, would in a generation reduce the height along the skyline by no more than a few feet, a reduction imperceptible at any given time. There was a hill which formed part of a landscape admired by cultivated visitors; its invisible back was to be touched for commercial purposes, and this was an unforgivable offence. So again, no demonstration of the country's need for more electric power, no precautions to preserve amenities, would excuse the placing of power plant where it could be seen from the neighbourhood of a cathedral, and of course no requirements of national defence can excuse the use of downs or moorlands as training ground for troops. These, even national defence, are dubbed " sectional interests," and it will not diminish the resistance against decisions in such matters, reached upon a balancing of different factors, that the decision is reached in consultation with a Minister of cabinet rank. The offence lies in the idea that there can have been anything to balance.

NEW COMMISSIONS

HUNTINGDON COUNTY

Lilah Helen Suzanne, Baroness De Ramsey, Abbots Ripton, Huntingdon.

LONDON COUNTY

Countess of Euston, 43, Hollycroft Avenue, Hampstead, N.W.3.
Godfrey Godfrey-Isaac, Ridgehanger, Hillcrest Road, Hanger Hill, W.5.
George James Morley Jacob, 2, Hobart Place, London, S.W.1.
John Peter Marindin, 42, Tanner Street, Bermondsey, S.E.1.
John Carrington Spencer, 1-3, Endsleigh Place, W.C.1.
Mrs. Mary Elizabeth Henderson Stewart, 6, Amen Court, St. Pauls, E.C.4.
Mrs. Phyllis Winifred Wernham, Christ Church Vicarage, Forest Hill, S.E.23.

OXFORD COUNTY

Mrs. Georgina Anderson Cumming, Staithdene, Clanfield, Oxon.
Sir Henry George Massy Dashwood, Bart., Ledwell House, Sandford St. Martin, Oxford.
Cyril Morris, Bristol House, Oxford Street, Woodstock, Oxford.

WILTS COUNTY

Mrs. Edith Walker Begg, 143, Perrys Lane, Wroughton, Nr. Swindon, Wilts.
Arthur Madge Bennett, 87, Morris Street, Swindon, Wilts.
Mrs. Lilian Maud Blackburn, Strangeways, Calne, Wilts.
Mrs. Edith Grace Hill, South Marston House, South Marston, Nr. Swindon.
Mrs. Barbara Godolphin Sykes, Dinana's, Stockton, Warminster.
Mrs. Dorothy Tandy, 4, The Drove, Ludgershall, Nr. Andover, Hants.
Wilfred Hedley Webb, Upper Wanborough, Nr. Swindon, Wilts.

LOCAL FINANCIAL REPORTS AND ABSTRACTS

Cumberland Financial Review

Changes in the services administered by the Cumberland county council, summarized by the county treasurer (Mr. John Watson, F.S.A.A., F.I.M.T.A.) in his introduction to a review of the county council's accounts for the financial year 1948-49, are reflected in various statistics. Total rate fund expenditure of the county council rose from £2,291,900 in 1947-48 to £2,424,400 in 1948-49, but the amount met from rates fell from £648,500 to £562,600. Those converse movements were mainly due to an increase from 64.5 to 68.5 *per cent.* in the proportion of expenditure borne by Government grants, which amounted to £1,660,300 in 1948-49 compared with £1,479,000 in 1947-48. A reduction of the total county rate, from 15*s.* to 14*s.* 2*d.* in the £, thus became possible in 1948-49, and was continued in 1949-50. The recession of 10*d.* in the £ was, however, moderate in comparison with an upward turn of 3*s.* 6*d.* in the £ after 11*s.* 6*d.* in 1946-47. A coloured bar diagram showing the sources from which the total rate fund expenditure of Cumberland county council has been met in each of sixteen years illustrates the assistance derivable from this form of presentation in tracing variations from year to year and the trend over a period.

The equivalent rate in the £ of all local rates, *i.e.*, including levies by councils of Cumberland county districts for local requirements, was estimated by the county treasurer to be 18*s.* 4*d.* in 1948-49, which was 4*d.* below 18*s.* 8*d.* in 1947-48; the equivalent poundage for 1949-50 has continued at 18*s.* 4*d.* As is not infrequently the case in administrative counties, the average poundage in Cumberland is between higher poundages in urban parts and lower in rural. In both 1948-49 and 1949-50, poundages in urban areas ranged up to 21*s.*, while the average of 154 separately rated areas within seven rural county districts was 16*s.* 11*d.* in 1948-49 and 17*s.* 2*d.* in 1949-50. Statistics in the Cumberland booklet have much value both as current information and as a record of experience for guidance in the future.

Glamorgan Abstracts of Accounts

Net expenditure on general county purposes transferred to the net revenue account for 1948-49 is shown at £3,676,000 in the abstract prepared under the direction of the county treasurer (Mr. W. H. G. Cocks, F.I.M.T.A., F.S.A.A.). Substantial items in gross expenditure of £9,063,000 included £5,205,000 for education, £1,000,000 for roads and bridges, £655,000 for the standing joint committee (police pensions and gratuities required £124,000), and £646,000 for health. Income from Government grants included £3,480,000 in respect of education, £473,000 for roads and bridges, £262,000 from the Home Office towards the cost of police, and £164,000 under the National Health Service Act, 1946. Exchequer Equalization Grant credited to net revenue account amounted to £2,783,000, equivalent to a general county rate of 21*s.* 1*d.* in the £. This grant, the county treasurer explained in a helpful statement describing every grant receivable by the county council, is payable under the Local Government Act, 1948, s. 2, and replaced the General Exchequer and Interim Supplementary Grants as from April 1, 1948. The basis of distribution to Glamorgan is the relationship between the rateable value per head of "weighted" population in the county and that in England and Wales as a whole. The product of precepts issued for general county purposes credited to 1948-49 net revenue account was £1,019,000. Expenditure on general and special county purposes which was met from rates and balances amounted to £942,000, or approximately ten *per cent.* of a total expenditure of £9,458,000.

Among general statistics, net weekly cost of maintenance at an approved school with an average occupancy of seventy boys is shown as £3 19*s.* 4*d.*, and at a remand home for girls £6 18*s.* 10*d.* The higher figure for the remand home was mainly due to a average occupancy substantially below accommodation provided, which is difficult to avoid while ensuring that occasional maximum demand is catered for. At March 31, 1949, actual strength of the regular police force was 715, against an authorized strength of 925; civilian employees numbering seventy-four were also below the authorized strength of 103. Fire service full-time operational personnel numbering 239 were close to authorized strength of 241 but part-time personnel of 412 were below the 515 authorized. Gross outstanding debt of the county council at March 31, 1949, was £1,250,000, on which the average rate of interest was £4 1*s.* 0*d. per cent.*, assimilating rates ranging from three to 6½ *per cent.* Net loan debt of £888,000 was equal to £1 4*s.* 6*d.* per head of population, or 6*s.* 1*d.* per £ of rateable value. The general statistics and accounts are complementary and, coupled with the explanatory information inserted by the county treasurer at appropriate places, gives an excellent picture of local government finance in a populous county.

Bristol City Report and Accounts

Quality is as prominent in the annual financial report and abstract of accounts prepared by the city treasurer (Mr. L. M. Tapson, F.I.M.T.A., F.S.A.A.) on the last occasion before his retirement from office as in the long series which we have been pleased to summarize from time to time. Total "revenue turnover" of £10,195,000 in 1948-49 was lower than that of £12,298,000 in 1947-48, mainly due to the transfer of the electricity undertaking on which general expenditure in 1947-48 was £2,443,000. The total of £10,195,000 was divisible between rate fund services £7,039,000, housing revenue account £928,000, and trading services £2,228,000 (including the dock undertaking £1,867,000). Looked at another way, the £10,195,000 was met from general income of £4,260,000 Government grants and reimbursements £2,280,000, reimbursement of loan charges on transferred services £692,000, and local rates, etc., £2,933,000. Rates raised in Bristol during 1948-49 totalled £3,053,000, from a levy of 18*s.* in the £, compared with £3,032,000 in 1947-48, from 17*s.* 6*d.* in the £. The net effect of financial changes under the Local Government Act, 1948, revision of the education grant formula, transfer of certain functions from the corporation under various enactments, and rising costs and prices, was adverse in Bristol in 1948-49, as in a number of other county boroughs where some financial benefit had been anticipated as a solace for distasteful diminution of functions.

Income in excess of expenditure shown in the revenue account of the insurance fund, established under a local Act of 1930, was £11,300 in 1948-49. Contributions from committees amounted to £6,100 and interest on investments (valued at nearly £300,000) to £7,900. Main meals numbering 1,686,000 and other meals numbering 1,797,000 were sold at eleven civic catering establishments during 1948-49, resulting in a gross surplus of £18,100, and a net surplus, after charging income tax and profits tax, of £9,600, which was used to defray capital expenditure incurred during 1948-49 and earlier years. Motor tax revenue collected in Bristol during 1948-49 amounted to £581,000 in respect of 43,700 private cars, 13,700 cycles, 16,600 other vehicles and 55,700 driving licences. This and much other information presented in a lucid and attractive manner gives an interesting insight into the finances and administration of a progressive city.

Luton Financial Survey

Rates remaining unpaid in the borough of Luton at the end of 1948-49 amounted to the small sum of £9, out of a gross

amount of £726,080 collectable from a rate of 18*s.* in the £ levied in respect of just over 33,000 hereditaments. Nearly 29,000 dwelling-houses represented sixty-five *per cent.* of the total rateable value in the borough of £757,000, equal to £6 18*s.* 3*d.* per head of 109,500 population. Rather more than one-third of the dwelling-houses were in the category with a rateable value of over £15 but not exceeding £20. The net cost of services provided by the borough council chargeable through the rates on a house with a rateable value of £20 was £7 19*s.* 6*d.* in 1948-49; the three largest items were £1 10*s.* 7*d.* for administrative expenses, £1 3*s.* 10*d.* for housing and £2 8*s.* 7*d.* for sewerage and sewage disposal. Among the items covered by a net cost of £10 0*s.* 6*d.* in respect of services administered by the Bedford county council were £6 2*s.* 10*d.* for education and £2 6*s.* 7*d.* for highways and bridges. An addition of £2,200 (equivalent to 0·72*d.* in the £) to local balances provided for in the 1948-49 levy of 18*s.* was in sharp contrast with a withdrawal of £84,900 (equivalent to 2*s.* 2·85*d.* in the £) allowed for in the levy of 19*s.* 6*d.* in 1947-48. Exchequer grants and other sums receivable under the Local Government Act, 1948, were apparently more advantageous to Luton than those under the earlier Local Government Acts; sums amounting to £96,000 receivable in 1948-49 represented a rate credit of 2*s.* 7·42*d.* in the £, compared with £66,000 equal to a credit of 1*s.* 8·76*d.* in 1947-48.

Growth of the housing activities of the borough council are reflected in statistics for 1948-49 compiled by the then borough treasurer (Mr. F. W. Bunting, F.I.M.T.A., F.S.A.A., latterly accountant to the Northern Area Gas Board). The number of houses covered by the housing revenue account in 1948-49 was 2,401, more than double the 1938-39 total of 1,020. Despite frequent references nowadays to "cheap money," the Luton revenue account shows that the amount of interest charges on housing loans has increased in slightly greater ratio than the number of houses, provision of £24,800 in 1938-39 having been replaced by £63,000 in 1948-49. The force of the truism that a smaller amount of principal, representing lower capital outlay, at a higher rate of interest, is often less costly than "cheap money" to meet swollen capital outlay, can be seen in loan redemption charges of £27,600 in 1948-49 nearly five times greater than those of £5,600 in 1938-39. The deficiency of £32,000 on the housing revenue account in 1948-49 was equal to a weekly rental figure of about 5*s.* on every house. This glimpse of the contents of the Luton financial survey indicates the reasons for its popularity as a source of information and its usefulness as a means of promoting desirable interest in civic affairs.

REVIEWS

Administrative Tribunals at Work. Edited by Robert S. W. Pollard. London: Stevens & Sons Ltd. Price 17*s.* 6*d.*

This book forms part of a series of publications by Messrs Stevens and Sons, under the auspices of the Institute of Public Administration. It comprises an introduction by Mr. Pollard, with seven lectures or essays by him and others, upon the working of administrative tribunals existing today under English law. Those selected for treatment cover conscientious objectors; the National Assistance Act, 1948; furnished houses rent tribunals, assessment committees and the proposed new tribunals replacing them under the Local Government Act, 1948; the professional discipline of solicitors; town and country planning, and some tribunals appointed by the Ministry of Labour. It is a mixed bag, by different authors who approach their subjects from different points of view. They have this in common that (as is pointed out in a preface by Professor Robson) the bitterly hostile attitude towards administrative tribunals which at one time was common among English lawyers has now passed away, so that the case for having some tribunals of the kind need no longer be argued; on the other hand, the practice and procedure of those tribunals has never been handled consistently by Parliament. The essays are followed by a list of administrative tribunals in existence at the end of 1949. It will startle many to find that this list, printed in small type, covers thirteen pages; although it should be said in this connexion that many of the items do not relate to "tribunals" in any ordinary sense, but to sections of Acts of Parliament under which a person may have recourse to some other person, or to some body, which is not one of the ordinary courts. To take, for instance, a matter with which most of our readers are familiar, inquiries into confirmation of byelaws are mentioned, with a reference to ss. 249 and 250 of the Local Government Act, 1933, whereas in reality there is nothing in the nature of a "tribunal" concerned with this matter; moreover, the entry is under the heading "Home Office" whereas much the greater number of potential inquiries into the confirmation of byelaws would still arise in the jurisdiction of the Minister of Health. It is said to be unknown whether legal representation is allowed at such an inquiry; a simple question to the Ministry or Home Office, or to any experienced town clerk, would give the answer. The heading for the Minister of Health covers nothing about s. 250 of the Local Government Act, 1933, or about the power of revoking byelaws, which might be exercised either under the Public Health Act, 1936, or under the Housing Act, 1936, and it has regards to inquiries) parallel to confirmation. The appendix is, in other words, not quite accurately balanced, and suggests that the learned authors have attempted an academic rather than a practical approach. Perhaps it was inevitable in a preliminary study of this sort, contributed by different hands, that there should be lack of balance here and there; to say this is not to depreciate the utility of the book within its limits. It is high time that the subject of administrative justice in this country should be examined again from a philosophic standpoint, comparable with that adopted by Dicey many years ago; were this done, it might be hoped (if not expected) that Parliament would at last consider some kind of general administrative court. The present work can be regarded as a preliminary to such a comprehensive study. It does not altogether bring out one feature of the present situation, namely how far Parliament has gone in requiring specialized tribunals, or at least their chairmen, to be appointed by the Lord Chancellor, and how far the different departments of government have gone in practice towards working out, in effect, uniform procedure so far as circumstances allowed. The emphasis of the book is, rather, on the diversity which certainly exists, than on what has been done to get rid of that diversity. Nevertheless, it is important for the philosophical study of the subject, leading if fate is kind to some sensible and philosophical solution such as has been adopted in some other countries, that the "honest bodman" shall accumulate material. The present accumulation is none the worse for having been produced by different hands, the hands of persons who approached the problems involved from diverse points of view.

The Institutional Treatment of Delinquents. By Sir Alexander Maxwell, G.C.B., K.B.E. (The Ninth Clarke Hall Lecture). London: Clarke Hall Fellowship. Price 1*s.* post free.

The Clarke Hall Fellowship is now too well known to need any introduction to our readers. In securing Sir Alexander Maxwell to deliver this ninth lecture they chose one who has a full and practical knowledge of his subject. He served in the Home Office in many capacities, which included those of Chief Inspector in the Children's Branch, chairman of the Prison Commission and first Deputy and later Permanent Under Secretary of State. Mr. Chuter Ede, the Home Secretary, who introduced him to his audience, spoke of him in the warmest terms with which all who were privileged to know his work at the Home Office will agree.

We recommend all who are in any way concerned with the administration of justice to make a point of reading this lecture, and it will also provide food for thought for a much wider public. It tells of the modern developments and trend in the institutional treatment in approval schools, borstal institutions and prisons. The theory is the same in all three, that detention with its deprivation of liberty and personal freedom is the real punishment and that the treatment in the institution, while it must have the necessary discipline and firmness, should be reformative, formative and instructive, and not punitive. The writer of this review heard the lecture and has read it since. The arguments sound unanswerable, and the case made out is theoretically perfect. Yet one is left with an uneasy feeling that may be the system does not take sufficient account of the adaptability of the human animal, and of the danger of making conditions in institutions (apart from the actual detention) more pleasant than those to which an offender may be accustomed in his normal daily life outside. Examples could be given, but space forbids.

MISCELLANEOUS INFORMATION

RATE POUNDAGES 1947-51

Counties (a)	1947-48 s.	d.	1948-49 (b) s.	d.	1949-50 s.	d.	1950-51 (c) s.	d.
Berkshire	12	0	13	9	15	0	15	0
Cambridge	15	4	14	9	15	4	18	6
Cheshire	11	9½	10	10	11	2	11	4
Cornwall	12	0	13	6	14	6	13	0
Derby	12	0	11	0	10	0	9	6
Essex	14	6	13	9½	12	10½	13	9½
Gloucester	15	0	12	6	12	6	12	6
Hampshire	11	0	12	0	14	3	13	9
Hertford	13	9	13	8	13	11	14	10
Kent	13	4½	13	10½	13	7½	13	11½
Lancashire	13	1	12	1	11	0	11	6
Lincoln, Lindsey	15	9	12	9	11	0	13	0
London	8	6	9	3	9	3	9	3
Middlesex	12	11½	11	7½	10	6	11	6
Monmouth	18	6	10	0	10	0	10	6
Norfolk	15	6	13	0	11	6	12	3
Nottingham	13	6	11	0	11	0	12	0
Somerset	14	2	14	2	14	0	14	6
Warwick	12	5½	11	3½	11	4½	13	4½
Worcester	13	0	11	0	13	0	11	0
County Boroughs								
Birmingham	21	0	18	6	18	6	18	6
Bristol	17	6	18	0	17	0	17	0
Coventry	18	6	17	6	17	6	19	6
Doncaster	17	6	17	6	17	6	18	0
Exeter	16	0	17	6	19	0	19	0
Hastings	14	0	15	6	15	6	16	6
Ipswich	23	4	19	8	20	0	21	0
Kingston-upon-Hull	23	10	21	0	19	0	21	2
Leeds	18	0	18	0	21	0	20	6
Leicester	19	6	18	6	19	4	19	10
Manchester	20	0	18	6	19	9	20	0
Rochdale	19	0	18	6	19	0	21	0
Sunderland	19	6	17	6	16	6	16	6
Wigan	19	0	17	0	17	0	17	0
Wolverhampton	16	0	16	0	16	0	17	6
Boroughs								
Barnes	14	8	15	6	15	6	15	8
Bedford	16	6	15	6	18	0	18	8
Cambridge	19	0	16	10	19	10	22	0
Chelmsford	17	0	16	2	16	2	17	6
Coopers	16	0	16	8	16	8	18	0
Leyton	20	0	20	0	20	0	20	0
Middleton	20	0	18	6	18	6	19	6
Newcastle-under-Lyme	23	10	18	8	18	8	18	8
Penzance	20	0	21	6	23	0	22	0
Rochester	18	6	18	0	19	0	19	0
Romford	19	5	17	8	17	2	18	2
Salisbury	15	8	14	8	16	10	16	6
Swindon	20	0	19	0	23	0	22	0
Twickenham	19	2	17	8	16	8	17	2
Wednesbury	22	0	17	6	17	6	17	8
Metropolitan Boroughs								
Fulham	15	2	16	0	16	0	17	6
Greenwich	16	4	17	8	17	0	17	0
Hammersmith	16	10	16	10	16	10	18	0
Hampstead	12	6	16	0	17	8	17	2
Kensington	14	6	15	8	17	0	17	6
Woolwich	18	9	17	9	18	6	18	0

Notes.—(a) in most counties the poundages shown (general plus special rates) are the highest precepted by the county council in certain parts of the county; (b) various transfers of functions and financial changes were made during the year 1948-49; (c) a few of the 1950-51 poundages are recommendations to the council, or are poundages for the first half-year doubled.

HYGIENIC REQUIREMENTS OF LICENSED PREMISES

Nottingham licensing justices have told owners and licensees that they must provide hot and cold running water in bars for the cleansing of glasses.

At the annual licensing meeting held recently, Mrs. E. F. Hyatt, the chairman, said that they had received a letter from the Nottingham health committee complaining of the lack of such facilities at certain houses.

"These matters should be attended to without delay," she added. "Pending improvements by the owner, the public should apply its own remedy—by transferring its custom to cleaner and better run houses."

Commenting on the fact that the transfer of licences had increased from eighty in 1948 to 106 in 1949—an increase of over thirty *per cent.*, Mrs. Hyatt asked: "Does this indicate that licensees are unable to obtain sufficiently good terms with the owners to compensate them for the decreased sales of liquors, or is it that the right type of tenant is difficult to obtain?"

Frequent changes of tenancy were not in the best interest of the public, as tenants might become indifferent to their obligations.

"Although the justices have in the past not refused a transfer on the production of testimonials," added Mrs. Hyatt, "they are left with a doubt that in many cases the right type of tenant has not been chosen."

MIDLAND RENT TRIBUNALS

Amalgamation of the Wolverhampton and Walsall Rent Tribunals, set up under the Furnished Houses (Rent Control) Act, 1946, has taken place, and the Walsall office has been closed.

The combined tribunal is known as the Wolverhampton and Walsall Districts Rent Tribunal. The chairman is Mr. A. Darbey, the late Wolverhampton chairman.

The tribunal will serve an area of about 1,100 square miles, from Uttoxeter in the north to Kidderminster in the south.

ROAD ACCIDENTS—DECEMBER, 1949

The return of the number of persons reported to have died or to have been injured, as a result of road accidents in Great Britain during the month of December, 1949, is as follows:—

Classification of persons	Total		
	Died	Injured	
		Seriously	Slightly
Pedestrians:—			
(i) under fifteen	46	389	1,291
(ii) fifteen and over	260	1,239	2,465
Pedal cyclists:—			
(i) under fifteen	6	95	296
(ii) fifteen and over	72	653	1,967
Motor cyclists	65	581	1,106
Drivers	37	404	1,832
Passengers (sidecar or pillion):—			
(i) under fifteen	—	2	22
(ii) fifteen and over	7	101	242
Passengers (other vehicles):—			
(i) under fifteen	4	43	290
(ii) fifteen and over	35	693	2,645
All persons 1949	537	4,200	11,776
1948	547	3,613	11,954

BOOKS AND PUBLICATIONS RECEIVED

Three Addresses given to the Justices of the City of Manchester, by Walter Lyon, clerk to the justices, and an Address by Harold Cooper, deputy clerk.

These lectures, as well as one by Mr. J. Wellesley Orr, the stipendiary magistrate for Manchester, which has not yet been printed, were delivered as part of a scheme for the instruction of justices in their duties. This kind of help is just what is needed, and both Mr. Lyon and his deputy have presented a great deal of valuable material in plain and simple terms. The Manchester justices are fortunate to be so well catered for and no doubt there are many other clerks doing similar work in raising the standard of efficiency of the magistracy.

Mr. Lyon's addresses dealt with the practice and procedure in the magistrates' courts and covered, not only criminal cases, but also matrimonial, guardianship and affiliation cases. Mr. Cooper dealt with juvenile courts and probation.

The lectures may be obtained from Mr. Lyon at the City Magistrates' Court, Manchester, the price being 4*s.* for his three addresses, and 2*s.* 6*d.* for the address by Mr. Cooper—both prices inclusive of postage.

THE WEEK IN PARLIAMENT

By Our Parliamentary Correspondent

"COSH" ROBBERS

In the House of Lords last week, Viscount Simon asked the Government the number of crimes known to the police and classified as robbery with violence in the Metropolitan Police District in each of the years 1940 to 1949, in which the criminals concerned had provided themselves with implements of the character of "coshes."

The Lord Chancellor replied that the crime reports in the Metropolitan Police District from which that information could be extracted had been destroyed for the years prior to 1944. Regarding offences of robbery and assault with intent to rob known to the police since then, a search of the crime reports showed that the numbers of cases in which coshes or other blunt instruments were used were as follows: 1944, twenty-eight; 1945, forty-one; 1946, forty-three; 1947, forty-seven; 1948, forty-five; 1949, thirty-three.

In a supplementary question, Viscount Simon asked whether consideration was being given to amending the law so that a man found in possession of an implement of that kind would be liable to be punished, as he was, if he was found in possession of house-breaking tools.

The Lord Chancellor replied that that matter was being considered by the Home Secretary with a great deal of sympathy. He was trying to evolve something on the lines suggested. The difficulty was one of definition.

MAINTENANCE ORDERS BILL

The Maintenance Orders Bill received a unanimous Second Reading in the House of Lords.

Moving the Second Reading, the Lord Chancellor said that what made the Bill complicated was that there were three kinds of orders to be dealt with—namely, wife maintenance orders, affiliation orders and orders for the maintenance of infants under the Guardianship of Infants Act. The Bill concerned England, Scotland and Northern Ireland, and the existing law was different in each of those three countries.

The position in all three countries was that where the man had moved out of the country where the order was made, there was no practical method of enforcing it against him. Formidable difficulties had been encountered in devising a scheme for the making and enforcement of orders between the different parts of the United Kingdom. They hoped, however, that that rather lengthy Bill did at least provide a working solution.

PERSONALIA

APPOINTMENTS

Chief Detective-Superintendent William Merrilees of Edinburgh city police has been appointed chief constable of the Lothians and Peebles in succession to Major Sholto W. Douglas who is retiring after holding the post since 1914. Mr. Merrilees is fifty-one years of age and joined the Edinburgh police force in 1924. He was promoted sergeant six years later and four years afterwards became detective-inspector. In 1940 he was promoted to detective-lieutenant and later that year became detective-superintendent. He was promoted to his present rank of chief superintendent three years ago and he was awarded the King's Police Medal in 1944.

Mr. A. L. Slater, LL.B., deputy clerk of the Chertsey urban district council, has been appointed deputy town clerk to the borough of Beddington and Wallington. Before taking up his present position in 1948, Mr. Slater was senior assistant solicitor to Leyton corporation. During the war he served in the Royal Artillery, attaining the rank of captain.

Mr. J. Smith, LL.B., deputy town clerk of Bridlington, has been appointed solicitor and town clerk of Dunstable. Mr. Smith is thirty-three years of age and was previously deputy town clerk of Heywood. He served in H.M. Forces during the war. Mr. J. R. Lloyd, assistant solicitor at Bridlington, has been appointed deputy town clerk in place of Mr. Smith.

Mr. Philip Methuo Vine, B.A., LL.B., assistant solicitor to the metropolitan borough of Paddington, has been appointed chief assistant solicitor to the Bethnal Green corporation. Mr. Vine was articled to Mr. W. H. Bartley, town clerk of Paddington, and during the war he served in the Royal Artillery, reaching the rank of captain.

Mr. D. W. Tattersall, assistant solicitor to the Fulham borough council, has been appointed assistant solicitor to the Flintshire county council. Mr. Tattersall is thirty-four years of age and was previously junior assistant solicitor to the Enfield urban district council. He served in the army during the war.

OBITUARY

Sir Harold Collister, a former puisne judge of the High Court of Judicature at Allahabad, died at Farnham, Surrey, on February 22. Born in 1885, he was educated at St. Lawrence College, Ramsgate, and Sydney Sussex College, Cambridge. He served in the United Provinces as an assistant magistrate and in 1922 was appointed a district and sessions judge. In 1933 he was appointed an additional judge at the High Court, Allahabad, and in 1935 he was appointed judge. He was knighted in 1944 and retired in the same year.

Mr. Edward Gilbert Woodward, metropolitan magistrate, died recently at the age of forty-nine. Educated at Shrewsbury and Balliol College, Oxford, he was called to the Bar by the Middle Temple and practised on the northern circuit. He was appointed a metropolitan magistrate in 1948 and sat at the Clerkenwell, Bow Street and Thames courts.

Mr. Stanley Edgson, F.R.I.C.S., one time mayor of Westminster, died in Jamaica on February 18. Mr. Edgson, who was born in 1892, was elected a member of the Westminster city council in 1925 and was mayor of Westminster from 1941 to 1942.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, April 4

MAINTENANCE ORDERS BILL, read 2a.

Wednesday, April 5

HIGH COURT AND COUNTY COURT JUDGES BILL, read 1a.

MIDWIVES (AMENDMENT) BILL, read 3a.

HOUSE OF COMMONS

Tuesday, April 4

DISTRIBUTION OF INDUSTRY BILL, read 2a.

Wednesday, April 5

COAL MINING (SUBSIDENCE) BILL, read 1a.

IMPERIAL CANCER RESEARCH FUND

(Incorporated by Royal Charter, 1939)

Patron: HIS MOST GRACIOUS MAJESTY THE KING
President: The Rt. Hon. THE EARL OF HALIFAX, K.G., P.C.
Chairman of the Council: Professor H. R. DEAN, M.D., F.R.C.P.
Hon. Treasurer: SIR HOLBURT WARING, Bt., C.B.E., F.R.C.S.
Director: Dr. JAMES CRAIGIE, O.B.E., F.R.S.

The Fund was founded in 1902 under the direction of the Royal College of Physicians of London and the Royal College of Surgeons of England and is governed by representatives of many medical and scientific institutions. It is a centre for research and information on Cancer and carries on continuous and systematic investigations in up-to-date laboratories at Mill Hill. Our knowledge has so increased that the disease is now curable in ever greater numbers.

Legacies, Donations, and Subscriptions are urgently needed for the maintenance and extension of our Work

Subscriptions should be sent to the Honorary Treasurer, Sir Holburt Waring, Bt., at Royal College of Surgeons, Lincoln's Inn Fields, W.C.2

FORM OF BEQUEST

I hereby bequeath the sum of £ to the Imperial Cancer Research Fund (Treasurer, Sir Holburt Waring, Bt.), at Royal College of Surgeons of England, Lincoln's Inn Fields, London, W.C.2, for the purpose of Scientific Research, and I direct that the Treasurer's receipt shall be a good discharge for such legacy.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—**Firearms**—*Instrument with captive bolt for stunning animal—Whether firearms certificate necessary.*

X is charged under s. 1 (2) (*a*) of the Firearms Act, 1937, with having in his possession a firearm and ammunition to which that part of the Act applies without holding a firearm certificate in force at the time. He is not covered by any exemptions. The weapon in question is one of those which stuns an animal (in this instance a pig) by projecting against its skull a captive bolt motivated by a blank cartridge, and the animal is killed while stunned by slitting its throat. The bolt never leaves the barrel and at its limit protrudes about one inch.

Can it be contended that this instrument is not a firearm within the meaning of s. 32 (1) of the Act on the following grounds:—

(*a*) The weapon is not a "lethal" weapon. Its whole purpose is to stun, not to kill.

(*b*) The words "other missile" cannot be strained to cover a captive bolt, the true and natural meaning of the word missile being that which is sent or thrown.

(*c*) The word "discharged" imports a freeing or releasing, again not appropriate to a captive bolt?

Although s. 4 (4) raises a presumption that "slaughtering instruments" require a licence, must not such an instrument, to be caught by the definition of slaughtering instrument in s. 32 (1), have the statutory characteristics of a firearm?

Even if this is not so, it seems that a conviction should be founded on a positive prohibition and not on the inference which s. 4 (4) may or may not raise. S.Q.

Answer.

Our correspondent puts the case persuasively, but on the whole we think a certificate is required. An instrument which is not lethal so far as some animals are concerned may be quite capable of killing a human being. In this case, it is, in our opinion, correct to say that the bolt is thrown for a limited distance and is discharged from the barrel to the extent of one inch. It does not seem to us to be necessary that the bolt should be completely released from all control to constitute a discharge of a missile. We think therefore this is a firearm.

2.—**Highway**—*Damage by tractors to verges.*

In this agricultural county, where the highway carriageways are commonly flanked by relatively level grass verges, agricultural tractors and trailers increasingly travel along the verge between the different parts of a farm. In consequence of this heavy wear the verge in places tends to form a morass in winter, unfit for passing or parking; highway drains are blocked or broken; and the edge of the carriageway, losing its earth support, breaks away. The vehicles are legally shod and the right to drive them along some portion of the highway is not disputed.

I have considered the Highway Act, 1835, s. 72 ("destroy or injure," "injury or damage") and the Road Traffic Act, 1930, s. 54 ("extraordinary traffic") and the relevant cases and P.P.s thereon. As to s. 72, the damage on each occasion is negligible; and the highway authority would be left with the alternative of giving evidence of the deterioration of the verge between two dates and attempting to fasten this onto a particular person's vehicles. As to s. 54 these tractors are found in increasing numbers on the roads, although, on any particular verge where there is damage, it is probable that only one person's tractors are concerned. Will you please advise whether the county council has there or any other penal or compensatory remedies? A. COPPP.

Answer.

Taking the verge to be part of the highway, and the tractor a normal and properly constructed vehicle, this is the old story of the ship's gun and the ship's armour. Just as deeper and stronger metalling of the *via trita* became necessary with the transition from pack animals to wheels, and with every improvement in wheeled transport, so the unmetalled verge (already reduced in width along many stretches of road, for the sake of faster travel) may have outlived its usefulness even along agricultural roads. From every point of view except that of mechanized traffic, its disappearance will be unfortunate, and each highway must be judged on its own facts, but widening the metalled portion may be the only remedy.

3.—**Landlord and Tenant**—*Implied statutory contract—Increase of rental—Whether contract still implied.*

A was the tenant of a council house let to him at a rent (inclusive of rates) of less than 10*s.* per week. He died in 1931 when his wife, B, became the tenant. In 1948 the rent was increased, and (together with the rates) now amounts to 12*s.* 6*d.* per week. Owing to the non-repair of the path leading to the back door of the house B has sustained injuries.

(1) Did the increase of rent have the effect of creating a new tenancy? *Kerr* v. *Bristle* (1923) 87 J.P. 16 may apply.

(2) If the increase was only a modification of one of the terms of the tenancy does the condition implied by the Housing Act, 1936, s. 2 (1) (*b*) still remain effective?

(3) Are the local authority as landlords responsible to B in damages? ATC.

Answer.

(1) Yes: apart from notices to which the Rent Restrictions (Notice of Increase) Act, 1923, applies, a notice by a landlord that he wants more rent is ineffectual so long as the tenancy continues, and the continuance of the relation of landlord and tenant at a higher rent (not being a rent stipulated for in the original agreement) indicates that a fresh tenancy has begun.

(2) It follows, deplorable as this result is, that the tenant by accepting the new tenancy lost the benefit of the section.

(3) Apart from the statutory contract implied by the section, we do not see how the claim could be framed, either in contract or in tort.

4.—**Local Authority**—*Procedure—Admission of councillors to committees of which they are not members.*

I was interested in your answer to P.P. 6 at 113 J.P.N. 758, regarding the right of county councillors, non-members of a county committee, to attend meetings thereof. I should be pleased to have your valued opinion in this matter, *mutatis mutandis*, in respect of urban district councils and municipal corporations. It is the practice, I know, in many such authorities to allow non-members of a committee to attend its meetings. I would also appreciate any authority you are able to give in respect of your opinion. ANON.

Answer.

The law is the same. The operative word in the previous query was "right"; in your query, it is "practice." The practice is, as you say, not uncommon: there are reasons for and against it, and since the statutes are silent the council's standing orders can provide either way. If the standing orders are silent, the committee can admit or exclude as it thinks best. In favour of admission, it can be said that anything is worth trying which reduces the frequent suspicion of hole and corner methods; against, that a non-member cannot be made subject to a standing order based on model S.O. 32 (*Lumley*, p. 3282). On the whole, we think the best plan is not to give councillors any privilege over the press and public, but, in these days of ever-widening delegation to committees, to admit the press and public wherever possible to all meetings of committees at which decisions can be reached, not requiring to be ratified by the council.

5.—**Master and Servant**—*Resignation and leave of absence—Imprisonment—Payment of salary to end of period of notice.*

An officer of the council tendered his resignation and, in view of the possibility of court proceedings, his resignation was accepted and he was granted one month's leave of absence. During the period of one month he was committed to quarter sessions and convicted, being sentenced to twelve months' imprisonment. Would the council be in order in paying salary for the full month to the date which would normally have been the termination of his duties and the period for which he was granted leave of absence? His conviction was not in connexion with fraud or misconduct or anything concerned with his official appointment. A.O.C.

Answer.

We assume that the month's leave coincided with the period of notice stipulated in his contract of service. The man is entitled to his salary up to the date when his service ended, *i.e.*, the end of the period of notice, whether the notice was given by him or by the council.

6.—**National Assistance**—*Maintenance contributions—Orders under s. 43 of National Assistance Act, 1948—Whether lump sum or periodical payments can be ordered in respect of past assistance.*

My council recently took proceedings under s. 43 of the National Assistance Act, 1948, against a man for the purpose of recovering the cost of providing residential accommodation for his wife and child. The justices were advised that they had no power to make an order in respect of the cost of assistance given before the date

of the hearing and that their proper course was to make an order for a weekly contribution to commence only as from the date of the hearing.

Having regard to the words "assistance given before the complaint was made" in s. 43 (3) and to s. 43 (5) (a) I contend this advice was wrong and this view appears to be supported by the writer of the article at 112 J.P.N. 599.

I shall be glad to have your opinion:—

(a) whether the court are entitled, in their discretion, to make an order for payment in respect of the assistance given before the date of the hearing of the case, and

(b) if so, would they be correct in ordering the defendant to pay a lump sum in respect of past maintenance plus a specified sum per week as from the date of the hearing for future maintenance or alternatively to pay an assessed amount for past maintenance at a specified rate per week concurrently with a fixed payment per week in respect of future maintenance from the date of the hearing.

S.A.A.N.

Answer.

The terms of s. 43 are such that we are forced to the conclusion that the court is entitled to order payment in respect of past assistance, as well as the payment of, *e.g.*, a weekly payment in respect of further assistance so long as it continues.

So far as past assistance is concerned it seems fairly clear that a lump sum payment can be ordered, and we see no reason why, in such case, the payment of the gross amount should not be spread over a number of weeks or months as suggested.

Our answers to the specific questions are, therefore, yes.

7.—**National Assistance Act, 1948, s. 47**—*Who may prosecute.*

Do you consider that a non-county borough council being "an appropriate authority" within the meaning given to the term by s. 47 (12) of the National Assistance Act, 1948, can bring proceedings for a fine under s. 47 (11) in addition to county councils and county borough councils, who are given a general power of bringing proceedings by s. 56 (3)?

A.N.A.

Answer.

Yes. Section 56 (3) is enabling, and we find nothing in this Act (such as there is in the Public Health Acts, 1875 and 1936) to cut down the normal rule that proceedings for an offence against the law can be taken by any person.

8.—**Private Street Works Act, 1892**—*Owner or reputed owner—Substitution of new name.*

In February, 1949, the council resolved to carry out private street works, and, within the seven days of the publication of the notice in the press, copies of the resolution mentioned in s. 6 (3) of the Act were served on A as owner, who was named specifically. It is now found that A is not the owner in fact and therefore notices will, presumably, have to be served on B who is now admitted to be the owner. The point is whether a fresh resolution and a fresh publication is necessary under s. 6 (3) so that service on B will be within seven days after the date of first publication, or whether it is in order merely to serve a provisional notice of apportionment on B without going through the process of making a fresh resolution and a fresh publication. The total amount of the estimate is not increased in any way, and I am wondering whether, in these circumstances, advantage can be taken by s. 11 of the Act by amending the provisional apportionments. The note to s. 11 in *Cranshell's Private Street Works* says that "the authority have power to amend from time to time the specifications . . . provisional apportionments without going through the formula of serving fresh notices and receiving objections, providing the total amount of the estimate . . . is not increased."

A.P.S.W.

Answer.

By s. 6 the provisional apportionment which the council start on its way by their resolution must contain the name of the owner or reputed owner, and the word "owners" in s. 6 (3) must in our opinion be read as covering reputed owners. In *Wirral R.D.C. v. Carter* (1903) 67 J.P. 31, Channell, J., said: "reputed owner . . . means the person reasonably believed by the local authority to be owner." In another report of the same judgement he is stated to have said that it means the person "really" believed by the local authority to be owner, "and whom the local authority has dealt with as such." So far, the conclusion would be that the council could proceed on the resolution already passed, the publication already made, and the notice already served, if their belief that A was owner was reasonable, the best test of reasonableness being their having dealt with him as owner upon other matters. Some support is to be found in *Re Cranston* (1873) 8 Ch. App. 520, at pp. 528, 529, and perhaps in *Simson v. Minister of Health* (1935) 99 J.P. 167, though neither case related to this Act. But in the *Wirral* case, *supra*, the Divisional Court decided against the local authority, notwithstanding that the person served as "owner" was in occupation and as manager of a company had dealt with the council in such a way that the council believed the company to be owners; notwithstanding also that the Lord Chief Justice had little doubt that the true owner had in fact received the notice. Our conclusion therefore is that the council would have a sporting chance of success if they went ahead here, and now gave notice to B so as to make certain that he knew what was happening, provided they could show the reasonableness of their first belief, failing which the whole procedure would be a nullity. But it is certainly safer, the error having been discovered in good time, as it had not been in the *Wirral* case, to begin again.

9.—**Road Traffic Acts**—*Dangerous driving—Summary trial under s. 28 (1) Criminal Justice Act, 1948—Case dismissed—Power to award costs.*

Recently a motor cyclist was summoned for dangerous driving and the justices tried the case summarily under s. 28 (1) of the Criminal Justice Act, 1948. After hearing the evidence for the prosecution, the justices accepted the defence's submission that there was no case to answer, whereupon defendant's counsel applied for, and was allowed, £8 8s. costs under s. 44 of the Act of 1948. The bench made it clear that the prosecution was properly brought.

Your attention is directed to (a) article at 113 J.P.N. 72, (b) p. 268 of *Archbold*, 32nd edition, and (c) to the meaning of the expression "Summary Jurisdiction Acts" in s. 1 of the Costs in Criminal Cases Act, 1908 (*Archbold*, p. 261; and *Stone*, 1949, p. 121).

I shall also be glad to know whether, in your opinion, the justices had power to award, or could properly have awarded costs to the defendant under s. 18 of the Summary Jurisdiction Act, 1848.

J. DOUBTFUL.

Answer.

We know of no power to award costs under s. 44 of the Criminal Justice Act, 1948, in a case which is tried summarily by virtue of s. 28 (1) of that Act.

Costs could have been awarded under s. 18 of the Summary Jurisdiction Act, 1848, to be paid by the prosecutor to the defendant.

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The Salvation Army

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

BOROUGH OF CLITHEROE

Appointment of Chief Clerk—Town Clerk's Department

APPLICATIONS are invited for this appointment at remuneration according to Grade A.P.T. IV of the National Scales, *viz.*, £480 × £15—£525.

Applicants must have had sound experience of Committee work and general administration in a Town Clerk's or Clerk's Department and the appointment will be subject to the National Scheme of Conditions of Service and to passing a medical examination. The post offers an excellent opportunity of acquiring valuable experience.

Applications, stating age, education, qualifications and experience, present appointment and names and addresses of two references, in an envelope endorsed "Chief Clerk" should reach me not later than Monday, April 24, 1950.

Canvassing will disqualify.

G. HETHERINGTON,
Town Clerk.

Town Clerk's Office,
Clitheroe.
April 14, 1950.

BOROUGH OF ST. MARYLEBONE

Appointment of Assistant Solicitor

APPLICATIONS are invited from qualified Solicitors, not exceeding 45 years of age, for the permanent appointment of Assistant Solicitor at a salary within Grade APT IX of £850 per annum, rising by one increment of £50 to £900, plus London "weighting."

The person appointed will be required to devote the whole of his time exclusively to the service of the Council and will not be allowed to engage in private practice or undertake any work outside the Council's service except with the previous consent in writing of the Council.

Candidates must have had considerable experience in advocacy, conveyancing, land acquisition, and the general legal work of a local authority.

The appointment will be subject to satisfactory medical examination by the Council's Medical Officer; to proof of age by production of birth certificate; to the National Scheme of Conditions of Service as adopted by the Council; and to compliance with the provisions of the St. Marylebone Borough Council (Superannuation) Acts, 1908-1936, and any modifications thereof. The appointment will be terminable by three months' notice on either side.

Forms of application are not issued, but candidates must write stating age, professional qualifications, present position, particulars of past appointments and all other essential information.

Applications must be accompanied by the names of not more than three persons to whom reference as to character and ability can be made, and must be delivered to the undersigned not later than *Saturday, April 29, 1950.*

The Council's Standing Orders provide that canvassing shall disqualify an applicant.

S. J. RUTTY,
Town Clerk.

Town Hall,
St. Marylebone, W.1.
April, 1950.

COUNTY BOROUGH OF WALLASEY

Deputy Town Clerk

APPLICATIONS from solicitors are invited by May 1, 1950, for the above appointment. Salary £950 to £1,100 by annual increments of £50.

Forms of Application and Conditions of Appointment obtainable from the undersigned.

EMRYS EVANS,
Town Clerk.

BOROUGH OF SUTTON COLDFIELD

Legal Clerk

APPLICATIONS are invited for the position of Legal Clerk in Grade III of the A.P.T. Division (salary £450 rising by £15 per annum to £495). Applicants must possess a sound knowledge of conveyancing and contract law.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, a satisfactory medical examination, and one month's notice on either side.

Applications, giving age, qualifications and experience, accompanied by not more than three recent testimonials must be delivered to the undersigned in sealed envelopes marked "Legal Clerk" not later than Thursday, April 27, 1950.

Canvassing, directly or indirectly, will disqualify.

R. WALSH,
Town Clerk.

Council House,
Sutton Coldfield.

Amended Advertisement.

HAYES AND HARLINGTON URBAN DISTRICT COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor at a salary in accordance with the National Joint Council's Scale as under, plus appropriate London "Weighting":—

(*a*) After admission and on first appointment within A.P.T. Division, Grade Va (£550—£610 per annum).

(*b*) After two years' legal experience from date of admission within A.P.T. Division, Grade VII (£635—£710 per annum).

Experience of conveyancing and of prosecutions in the summary jurisdiction courts is desirable, and previous municipal experience would be an advantage.

The appointment is subject to (*a*) the Council's Scheme of Conditions of Service, which is based on the National Scheme with minor amendments, (*b*) the Local Government Superannuation Acts, 1937 and 1939, (*c*) the successful candidate satisfactorily passing a medical examination, and (*d*) one month's notice on either side.

The Council may be able to assist the successful candidate with the provision of housing accommodation, if required.

Forms of application and further particulars and conditions of appointment may be obtained from the undersigned, to whom completed applications should be returned not later than Monday, April 24, 1950.

A. E. HIGGINS,
Clerk of the Council.

Town Hall,
Hayes, Middlesex.

BOROUGH OF TODMORDEN

Appointment of Town Clerk

APPLICATIONS are invited from Solicitors with previous local government experience for the appointment of Town Clerk at a commencing salary of £1,000 per annum, rising (subject to satisfactory service) by annual increments of £50, to a maximum of £1,200 per annum. The Conditions of Service in the Second Schedule to the Memorandum of Recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks dated September 8, 1949, will apply.

A house will be offered to the gentleman appointed.

Further particulars and conditions of appointment, and information as to the form of application, may be obtained from me, to whom applications (endorsed "Town Clerk") should be returned by Monday, April 24, 1950.

E. H. CHORLTON,
Town Clerk.

Municipal Offices,
Todmorden.
April 3, 1950.

BOROUGH OF SCARBOROUGH

Appointment of Clerk to the Justices

APPLICATIONS are invited from persons duly qualified under the Justices' Clerks' Act, 1877, for the appointment of whole-time Clerk to the Justices.

Applicants must possess a wide experience of magisterial law and practice, and keeping of Fines and Fees Accounts.

The commencing salary will be £1,000 per annum to be adjusted according to the proposed scale for Justices' Clerks when finally agreed upon. The candidate appointed will be required to devote his whole time to the duties and not engage in any other employment. Office accommodation and staff will be provided together with all necessary books (including law books), stationery, office requisites, etc.

The appointment is subject to the approval of the Secretary of State and to the provisions of the Local Government Superannuation Act, 1937 (and will be determined by three months' notice on either side). The successful candidate will be required to pass a medical examination.

Applications, giving age, qualifications, particulars of experience and the names of two referees to whom reference may be made, must be received, addressed to the undersigned, and marked "Appointment of Clerk to the Justices," not later than May 1, 1950.

CHAS. W. GOODALL,
Clerk to the Justices.

Court House,
Castle Road,
Scarborough.

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